

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WARREN D. ANDERSON

Plaintiff

v.

DAUPHIN COUNTY ADULT
PROBATION OFFICE, et al.

Defendants

: CIVIL ACTION NO. 1:15-cv-878

:
: (JUDGE KANE)
: (Magistrate Judge Saporito)

ORDER

Before the Court in the captioned action is a January 25, 2016 Report and Recommendation of the Magistrate Judge. No timely objections have been filed.

ACCORDINGLY, this 26th day of February 2016, upon review of the record and the applicable law and, **IT IS HEREBY ORDERED THAT** the Court adopts the Report and Recommendation (Doc. No. 48) of Magistrate Judge Saporito:

1) The motion to dismiss by Defendant Dauphin County Adult Probation Office (Doc. 12) is **GRANTED**. All claims against Defendant Dauphin County Adult Probation Office are **DISMISSED WITH PREJUDICE** for failure to state a claim under Fed. R. Civ. P. 12(b)(6);

2) The motion to dismiss by Defendant Police Officer Jon Fustine (Doc. 27) is **GRANTED**. All claims against Defendant Fustine are **DISMISSED** for failure to state a claim under Fed. R. Civ. P. 12(b)(6);

3) The motion for judgment on the pleadings by Defendants Police Officer Dan Smeck and the Lower Paxton Police Department (Doc. 45) is **GRANTED**. All claims against Defendants Smeck and the Lower Paxton Police Department are **DISMISSED**

for failure to state a claim under Fed. R. Civ. P. 12(c);

4) The motion to dismiss by Defendants Dauphin County Sheriff's Department, Deputy Sheriff Sean Reed, Deputy Sheriff McMillian, Probation Officer Brandon Reigle, Probation Officer Tom Walton and Probation Officer Burnell (Doc. 26) is **GRANTED in part and DENIED in part**, and:

a. all claims against the Dauphin County Sheriff's Department, Reed, McMillian, Reigle, and Burnell are **DISMISSED** for failure to state a claim under Fed. R. Civ. P. 12(b)(6);

b. the plaintiff's Eighth Amendment excessive force, Fourth Amendment unreasonable search, and state law claims against Walton are **DISMISSED** for failure to state a claim under Fed. R. Civ. P. 12(b)(6); and

c. the plaintiff's Fourth Amendment excessive force claim against Walton is permitted to proceed;

5) Plaintiff is **GRANTED** leave to file an amended complaint within thirty (30) days following partial dismissal of the original complaint; and

6) The matter is **REFERRED** back to the Magistrate Judge for further proceedings.

7) The Clerk of Court is hereby directed to terminate Defendant Dauphin County Adult Probation Office from the above captioned case.

s/ Yvette Kane
YVETTE KANE, District Judge
United States District Court
Middle District of Pennsylvania